IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 458 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMPRABHA SANJAYKUMAR JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 458 of 2000

MRS NISHA M PARIKH for Petitioner No. 1

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. This Revision Application under Section 397 read with Section 401 CrPC has been preferred against the judgment and order dated 19th June, 2000 passed by the learned Additional Sessions Judge, Jamnagar in Criminal Revision Application No.111/99 in so far as the maintenance

awarded to the petitioner by the learned Chief Judicial Magistrate, Jamnagar has been reduced by Rs.100=00 per month.

#. The petitioner had married the respondent no.2 herein on 10th February, 1997. However, there was a discord between the petitioner, her husband and his relatives, probably on the question of dowry, within months of the marriage. The petitioner and the respondent no.2 separated from the rest of the family and started having a separate residence. However, the respondent no.2 left the petitioner to reside with his family. The petitioner has, thus, been residing alone in a house provided by the respondent no.2 - the husband. The petitioner, therefore, filed Criminal Misc. Application No.591/98 in the Court of the Chief Judicial Magistrate, Jamnagar for maintenance under Section 125 CrPC. The learned Magistrate was, under his judgment and order dated 8th October, 1999, pleased to hold that the respondent no.2 had neglected to maintain his wife - the petitioner and that the respondent no.2 was liable to maintain her. As regards the income of the respondent no.2, it has been observed that the respondent no.2 had kept back the correct information from the Court. However, from the evidence on record, the learned Magistrate held that the respondent no.2 was earning a sum of Rs.100=00 per day. The learned Magistrate further observed that the respondent no.2 had no other liability. The learned Magistrate was, therefore, pleased to award a monthly maintenance of Rs.500=00 to the petitioner. Feeling aggrieved, the respondent no.2 preferred Criminal Revision Application No.111/99 before the learned Additional Sessions Judge, Jamnagar. The respondent no.2 did not dispute the fact of the petitioner being his wife and his liability to maintain the petitioner. However, what was urged was that having regard to the income of the respondent no.2 the maintenance of Rs.500=00 awarded to the petitioner was excessive. The learned Judge held that the respondent no.2 could be believed to be earning a sum of Rs.1,500=00 per month. Besides, under Section 125 CrPC, the petitioner was not entitled to maintenance more than Rs.500=00 per month. The petitioner was provided residential accommodation by the respondent no.2. The reasonable rent should, therefore, be deducted from the maintenance to which the petitioner would be entitled. The learned Judge observed that the rental value of the residential accommodation provided to the petitioner should be considered to be Rs.100=00 per month and that amount was, therefore, required to be deducted from the amount of maintenance to which the petitioner was entitled. Hence, the learned Judge reduced the

maintenance awarded to the petitioner by Rs.100=00 per month and directed that the petitioner was entitled to a monthly maintenance of Rs.400=00. Feeling aggrieved, the petitioner has preferred the present Revision Application.

#. I am of the view that the approach of the learned Additional Sessions Judge is wholly unsustainable. The learned Magistrate has carefully considered the evidence on record, has believed that the brother of the respondent no.2 has a Brass Factory and the respondent no.2 is working therein. Since, the respondent no.2 had kept back the information as regards his income, it was inferred that the respondent no.2 was earning Rs.3,000=00 per month. There is nothing on the record which warranted interference with the said finding recorded by the learned Magistrate. Besides, while awarding maintenance under Section 125 CrPC, the Court is required to consider the income of the erring husband, his other liabilities and the cost of living. While considering the cost of living, the Court would certainly take into consideration the amenities provided by the erring husband to the deserted wife. However, it can not be said that whatever amount is awarded should not be worth morethan Rs.500=00 per month including the amenities provided by the erring husband. In the present case, the deduction made from the monthly maintenance to which the petitioner was found to be entitled on the basis of the rental value of the residential accommodation provided by the respondent no.2 is unjusticiable and requires to be quashed and set aside.

#. The Revision Application is allowed. The impugned judgment and order dated 19th June, 2000 passed by the learned Additional Sessions Judge, Jamnagar in Criminal Revision Application No.111/99 is quashed and set aside. The judgment and order of the learned Chief Judicial Magistrate, Jamnagar in Criminal Misc. Application No.591/98 is restored. The respondent no.2 is directed to pay the arrears of maintenance in accordance with the order of the learned Chief Judicial Magistrate, Jamnagar, within three months from today. Rule is made absolute.

20th December, 2001. (Ms. R.M.Doshit, J.)
/sakkaf